

# STATE OF WASHINGTON



## OFFICE OF INSURANCE COMMISSIONER

### BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF WASHINGTON

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In the Matter of	)	No. D2000-47
	)	
REGENCE BLUESHIELD, authorized health care service contractor	)	CONSENT ORDER LEVYING A FINE RE: EMERGENCY ROOM CLAIMS
	)	

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#### **I. FINDINGS OF FACT**

1. Regence is an authorized health care service contractor registered to do business in the State of Washington.

2. In April, 1998, emergency room directors approached the Office of the Insurance Commissioner ("OIC") about their concern that some patients were hesitant to seek emergency care for fear that insurance carriers may deny valid emergency room claims. The emergency room directors stated their experience that such denials were occurring and asked the Office of the Insurance Commissioner to investigate. They believe that, if a pattern of improper denials were occurring, this would constitute a serious potential health risk to the public. .

3. In May, 1998, the OIC launched a targeted market conduct examination of whether carriers, including Regence, were complying with the new emergency room law, RCW 48.43.093, which went into effect January 1, 1998. The examination focused on emergency room claims during the first four months of 1998. The OIC found that Regence processed 64,737 emergency room claims during that period.

4. The OIC examined a sample of those claims. The sample contained 462 claims. The OIC found that 264 of the sampled claims had been denied. The OIC further found that 58 of the denied claims in the sample did not comply with RCW 48.43.093, the "prudent lay person" standard for handling of emergency room claims.

5. Some of the sampled claims were improperly denied because the emergency services were provided without a referral, or without pre-authorization, or by non-network providers. Regence acknowledges that there were such denials in the claims sample reviewed by the OIC. However, all such denied claims were subsequently paid, and Regence conducted training sessions and revised its claims processing system to address this problem.

6. Regence did not revise its member contracts and brochures to reflect the new emergency room law until long after its effective date. Regence's contracts and brochures included the phrase, "as determined by the Company," which the OIC believes misleads consumers into believing that Regence was the sole arbiter of whether an emergency room claim would be covered, despite the fact that the prudent layperson standard contains no such limitation. Regence disputes this and contends the contract and brochure language fairly and accurately complied with applicable law.

7. Regence subsequently paid all emergency room claims identified by the OIC as payable, to the extent of applicable coverage.

8. Regence contends there is no evidence that the company had any intent to violate the emergency room law, and Regence further asserts that it intended to comply with the law.

## **II. CONCLUSIONS OF LAW**

1. Regence improperly denied emergency room claims, which violated RCW 48.43.093.

2. Regence improperly handled emergency room claims, which is a violation of RCW 48.43.093.

3. Regence's member contracts and brochures violated RCW 48.43.093.

## **III. CONSENT TO ORDER**

The parties wish to resolve the issues raised by OIC's investigation of Regence's emergency room claims without further administrative or judicial proceedings. Regence hereby consents to the entry of this Consent Order and acknowledges the foregoing Findings of Fact and Conclusions of Law. Regence acknowledges its duty to comply fully with the applicable laws of the State of Washington.

The OIC has offered a settlement of the issues set forth herein in lieu of imposing any other applicable penalty. By agreement of the parties, Regence will abide by the following terms

(1) Regence will pay a fine of \$10,000.

(2) Regence emergency room claims processing and adjudications will immediately comply with the standards set forth in Regence's September 9, 1999, letter attached hereto as Appendix A.

(3) All Regence member contracts and brochures will contain the prudent lay person standard in language identical or substantially identical to that in the contract forms most recently filed by Regence with the OIC and approved by the OIC, or with other contract and handbook language hereafter filed by Regence and approved by the OIC.

(4) Regence will undertake a public service education program to increase public and Regence-member awareness of emergency health care access and coverage. This program will include paid advertising in media. Regence will submit scripts and written materials to the OIC prior to the onset of the public service education program for review and approval, which will not be unreasonably withheld per the terms defined in the letter from Robert Harkins to Margaret Stanley, dated June 8, 2000 (Appendix C). Regence will expend a minimum of \$100,000 on the hard costs of paid advertising in media, not including staff or other internal administrative expense, and will furnish documentation to the OIC of the amount expended following conclusion of the program.

(5) Regence will complete an internal emergency room claims audit as set forth in Appendix B attached hereto, and will share the findings of that audit with the OIC by way of written report submitted no later than August 15, 2000.

(6) Regence will provide a complete and accurate response to all OIC official inquiries within 15 business days, as required by WAC 284-30-650 and explained by Technical Assistance Advisory T98-4.

(7) The OIC will undertake no other enforcement action with regard to the emergency room claims discussed herein. Nothing in this Consent Order restricts future OIC enforcement action against Regence for violations of the insurance code unrelated to the emergency room claims at issue here.

(8) Regence will dismiss Thurston County Superior Court cause # 99-2-00390-9 upon execution of this Consent Order.

(9) Failure to comply with the stipulations herein and/or subsequent violations within 18 months of the execution of this agreement will result in an immediate imposition of an additional fine of not less than \$15,000 and other appropriate disciplinary action by the OIC. The OIC will not levy this additional fine or proceed with disciplinary action should Regence commit isolated, de minimis violations, as determined by the OIC insofar as Regence agrees to rectify such violations promptly.

The fine of \$10,000 must be paid in full within 30 days of the date of entry of this Consent Order. Failure to pay the fine or to fulfill the stated conditions within the allotted time shall constitute grounds for revocation of Regence's certificate of registration and for recovery of the full fine in a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

OIC will not seek revocation of Regence's certificate of registration should Regence commit isolated, de minimis violations, as determined the OIC, insofar as Regence agrees to rectify such violations promptly.

#### **IV. ORDER**

Pursuant to RCW 48.05.185, the Insurance Commissioner hereby imposes on Regence a fine of ten thousand dollars. The ten thousand dollar fine must be paid in full within thirty days of the date of entry of this Consent Agreement and Order. Failure to pay the fine or to fulfill any of the stated conditions within the allotted time shall constitute grounds for recovery of the full fine and for suspension or revocation of Regence's certificate of registration in a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

ENTERED AT \_\_\_\_\_, WASHINGTON, this \_\_\_\_ day of \_\_\_\_\_, 2000.

DEBORAH SENN

REGENCE BLUESHIELD

Insurance Commissioner

By \_\_\_\_\_  
By \_\_\_\_\_

Robert Harkins

Margaret Stanley

Deputy Commissioner

## II. Appendix B

### A. Regence Self-Audit of Emergency Claims and Complaints

Regence shall perform a self-audit of its emergency care claims handling. The self-audit shall consist of a review of claims and complaints relative to denial accuracy according to pertinent contract provisions and RCW 48.43.093.

The self-audit shall be performed as follows:

#### 1. Claims denied for emergency services.

Regence will undertake a review of all professional and outpatient ER claims (as identified by the place of service on the claim) with dates of service that fall within the fourth quarter 1999 and the first quarter 2000. All denials will be identified and reviewed based on the denial code. Those claims denied with denial codes recognized as improper for emergency claims during the OIC exam will be further reviewed for appropriateness and necessary adjustment.

#### 2. Grievances and appeals related to handling of emergency-related care.

Regence will undertake a review of all Regence and RegenceCare member grievances and appeals received during the fourth quarter 1999 and the first quarter 2000. All grievances and appeals related to handling of emergency claims will be identified and the action taken on each will be reviewed; necessary corrections, if any, will be made.

Regence shall complete its reviews as described above by August 9, 2000 and shall submit to the OIC a report of its findings of this self-audit no later than August 15, 2000. The report shall include a summary of each claim and each grievance or appeal, and a determination as to the validity of the company's action in the final disposition of each claim and grievance or appeal.

June 8, 2000

Ms. Margaret Stanley  
Vice President for Public Policy  
Regence BlueShield  
1800 Ninth Avenue  
P.O. Box 21267 S912  
Seattle, Washington 98111-3267

RE: Terms for approval of public service education program scripts

Dear Margaret,

This letter clarifies concerns of Commissioner Senn and the Office of the Insurance Commissioner regarding the public service education program stipulated in the Consent Order settling enforcement matter No. D2000-47. As stipulated in the Order, Regence BlueShield is to submit scripts and written materials to the OIC prior to the execution of the program. Because the approved plan for the program includes "ad-libbed" audio PSAs, we request that advance copies of recorded PSAs also be submitted prior to airing to ensure compliance with the terms delineated in the following paragraph. We will review the submittals for approval, which will not be unreasonably withheld.

The review is to determine the accuracy of the information presented. Additionally, in scripts and Public Service Announcements (PSA), there is to be no direct or inferred reference to Commissioner Senn or the Office of the Insurance Commissioner. Regence BlueShield's name should appear only in disclaimer at the end of the PSA and not in the body of the PSA message.

I know you share with Commissioner Senn and me the understanding that the purpose of the PSA program is to educate and alert the general public to its rights under Washington State's emergency room law and must not promote Regence's business interests. Thank you again for your hard work and cooperation in bringing this matter to closure.

Sincerely,

ROBERT A. HARKINS

Chief Deputy Commissioner